Appendix

ANALYSIS OF 12 U. S. CODE, SECTION 34a.

Language of the Statute.	Remarks.
c. 34a. "Any bank incorporated under the laws any State * * * may be consolidated with a tional banking association located in the same te * * *	*General authority* to consolidate a state bank with national bank.
* * * on such terms and conditions as may be fully agreed upon by a majority of the board directors of each association or bank proposing consolidate * * *	Requires *a lawful contract* —viz: an agreement not in violation of Sec. 34a itself, or of any other provision of law.
* * * and which agreement shall be ratified and nfirmed by the affirmative vote of each such asso- tion or bank owning at least two-thirds of its pital stock outstanding * * *	Procedural — stockholders' approval—⅔ds vote.
* * * at a meeting to be held on the call of the rectors after publishing notice of the time, place, d *object of the meeting* of four consecutive weeks some newspaper of general circulation published the place where the said association or bank is tuated * * *	Published notice—MUST contain statement of the *object* of stockholders' meeting, viz: a true statement of the terms and conditions of the contract.
* * * and after sending such notice to each areholder of record by registered mail at least n days prior to said meeting * * *	Notice of the *object* of stockholders' meeting to be mailed to each.
* * * Upon such a consolidation * * * the cor- rate existence of each of the constituent banks d national banking associations participating in ch consolidation shall be merged into and con- nued in the consolidated national banking asso- ation * * *	General provision for continuance of corporate existence in favor of consolidated bank.
* * * All the rights, franchises, and interests of ch of such constituent banks and national bank- g associations in and to every species of prop- rty, real, personal, and mixed, and choses in action ereto belonging, *shall be deemed to be transferred and vested* in such consolidated national banking	Provision for *automatic succession* to all property and property rights upon completion of consolidation.

Language of the Statute.	Remarks.
association without any deed or other transfer; and such consolidated national banking association, by virtue of such consolidation and *without any order* or other action *on the part of any court* or otherwise, shall hold and enjoy the same and all rights of property, franchises, and interests, including appointments * * * as trustee, executor, administrator * * * in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any such constituent institution at the time of such consolidation * * *	Declares deeds or … struments of co… unnecessary to a… such transfer.
"* * * If such consolidation shall be voted for at said meetings by the necessary majorities of the shareholders of the association and of the State or other bank proposing to consolidate, and thereafter the consolidation shall be approved by the Comptroller of the Currency, any *shareholder* of either the association or the State or other bank so consolidated, *who has voted against such consolidation* at the meeting of the association of which he is a stockholder, *or has given notice in writing* at or prior to such meeting to the presiding officer *that he dissents from the plan of consolidation,* shall be entitled to receive the value of the shares so held by him if and when said consolidation shall be approved by the Comptroller of the Currency * * *	Provides for such … by operation of l… out necessity of co… or other proceedin… firm or establish …
"* * * such value to be ascertained as of the date of the Comptroller's approval by an appraisal made by a committee of three persons, one to be selected by the shareholder, one by the directors of the consolidated association, and the third by the two so chosen * * * (then follow provisions entitling the stockholder to appeal to the Comptroller of the Currency for a reappraisal within five days after notice of the valuation of such committee).	Statutory right … holders to give af… dissent—manner … cise of right to re… of shares.
"* * * and *the value as ascertained* by such appraisal or reappraisal *shall be deemed to be a debt due* and shall be forthwith paid *to said shareholder by said consolidated association,* and the shares so	Manner of condu… praisal of share… necessary dissent …
	Appraised value … to be a *debt* of … solidated bank *pa… rectly to the sto…*

Language of the Statute.	Remarks.
id for shall be surrendered and, after due notice, d at public auction within thirty days * * *	
Where a dissenting shareholder has given notice provided in this section to the bank of which he a shareholder of his dissent from the plan of nsolidation, and the directors thereof fail for re than thirty days thereafter to appoint an ap-aiser of the value of his shares, said shareholder y request the Comptroller of the Currency to point such appraiser to act on the appraisal com-ittee for and on behalf of such bank."	Mandatory procedure against a corporation where it fails to appoint an appraiser.

ANALYSIS OF STATUTES DEFINING POWERS AND DUTIES OF THE COMPTROLLER OF THE CURRENCY.

In general, the office of the Comptroller of the Currency performs functions with respect to the national banks which are similar to the duties imposed by state law upon the Secretary of State and the Division of Corporations, in dealing with domestic concerns.

The Comptroller's office is a bureau in the Treasury Department at Washington. 12 USCA Sec. 1 provides:

> "There shall be in the Department of the Treasury a bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of a national currency secured by United States bonds * * * the chief officer of which bureau shall be called the Comptroller of the Currency and shall perform his duties under the general directions of the Secretary of the Treasury."

Under 12 USCA 21, national banking associations are formed by the execution of articles of association which are to

> "* * * be signed by the persons uniting to form the association, and a copy of them shall be forwarded to the Comptroller of the Currency, to be filed and preserved in his office."

Under 12 USCA 22, it is necessary to make an organization certificate; a copy thereof is to be filed in the Comptroller's office (12 USCA 23).

Before a national bank may commence business it is required to obtain a certificate under 12 USCA 27. This procedure is specified to insure the raising of the minimum amount of capital necessary to safe operation of the business. After investigation the Comptroller issues a certificate pursuant to 12 USCA 27.

Where a national bank desires to effect a change of name, it applies for the approval of the Comptroller under 12 USCA 30. This is clearly the performance of a duty corresponding with that vested in the office of the Secretary of State, in the case of domestic corporations.

The Comptroller is the officer who approves the establishment of branch banks under 12 USCA 36.

He is expected to pass upon the sufficiency of the capital and surplus of all banks under his jurisdiction, by virtue of 12 USCA 51. He has jurisdiction over applications for issuance of preferred stock under 12 USCA 51a and 51b. Under 12 USCA 53, he is required to determine that the minimum part of the subscription to capital stock is paid in before commencement of business.

The office of the Comptroller also has jurisdiction over applications for increase of capital and for the reduction of capital—see 12 USCA 57, 58, 59.

In short, the Comptroller of the Currency is a sort of Secretary of State and a Division of Corporations rolled into one—so far as the national banks are concerned. He has certain regulatory powers that are concerned with the structure of national associations. He is granted no power to validate any transaction that may violate the rights of any stockholder or group of stockholders in a bank under his jurisdiction.

Jurisdiction over the consolidation of national banks is conferred by 12 USCA 33; an application by a state bank for leave to become a national bank is governed by 12 USCA 35. In the case at bar, we are concerned with the merger of a state bank into a national bank. The procedure in such case is controlled by 12 USCA 34a. We have abstracted this section in the opening part of this appendix. We will quote here only those parts of the statute which concern the performance of duty by the Comptroller of the Currency. The following are the only powers granted:

1. Approval of consolidation before it may become effective.

> "If such consolidation shall be voted for at said meetings by the necessary majorities of the shareholders of the association and of the State or other bank proposing to consolidate, and thereafter the consolidation shall be approved by the Comptroller of the Currency, any shareholder * * * who has voted against such consolidation * * * shall be entitled to receive the value of the shares so held by him. * * *"

The effective date of a consolidation is governed by the date of the approval given by the Comptroller. This is clear from the following:

> "* * * (such shareholder) * * * shall be entitled to receive the value of the shares so held by him if and *when said consolidation shall be approved by the Comptroller of the Currency*, such value to be ascertained as of the date of the Comptroller's approval by an appraisal * * *"

2. Valuation of assets in case of demand by minority stockholders for appraisal and payment. Provisions to that effect will be found at 12 USCA 34a, pages 108-109.

There is no other term in Section 34a giving the Comptroller the power to do anything. His duty to require a consolidated bank to raise the minimum amount of capital, and to establish a safe corporate structure, seems to arise from the other sections cited.

Consolidation agreement. This is left to the constituent banks. There is no provision for prior approval of any contract by the Comptroller. We quote from the statute:

> "Any bank incorporated under the laws of any State * * * may be consolidated with a national banking association located in the same State * * * on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each association or bank proposing to consolidate * * *"

> "* * * which agreement shall be ratified and confirmed by the affirmative vote of the shareholders of each such association or bank owning at least two-thirds of its capital stock outstanding * * *"

Duty of Comptroller is limited to matters concerning sufficiency of the capital structure. The following is the only provision of this Act to indicate any duty which the Comptroller is expected to perform, except in the case of

an appraisal of shares at the request of a minority stockholder:

> "The capital stock of such consolidated association shall not be less than that required under existing law for the organization of a national banking association in the place in which such consolidated association is located."

No doubt the Comptroller would have the right to insist that any violations of law apparent to him be stopped. He might in practice prevent a violation of the rights of minority shareholders. However, this is a very different matter from the point under consideration. *The Comptroller is given no authority* to validate a consolidation plan by sanctioning the violation of legal rights of the minority.

We have the right to go into the merits and decide whether this particular plan does in fact infringe the rights of Ernest H. Denicke and Mary E. Doble. The statute contains nothing to interfere with the power of this court to make a full inquiry.

Although Congress intended the Comptroller to enforce the banking laws—this has not been the practice so far as the Anglo California National Bank and its predecessors are concerned. The record in the case of *Denicke v. Anglo, et al.*, CCA No. 10,329, now pending herein, illustrates the extent to which this obligation has been disregarded.

The Comptroller has no judicial power. His office is a part of the executive branch of our government. There is no right to modify the cause of action which appellants acquired as a result of this merger. We have the right to test this consolidation agreement in the same way that any other contract would be tested in a court of law.

COMPARISON OF CONSOLIDATION AGREEMENT IN NATIONAL SUPPLY CASE WITH CONTRACT OF THE ANGLO MADE EFFECTIVE ON JUNE 30, 1932.

There was a recent decision by this court in the case of *National Supply Co. v. Leland Stanford, Jr. University*, 134 Fed. (2d) 689.

The questions presented in that matter do not parallel the facts in the case at bar. The suit was one brought by Stanford University to compel payment of the redemption price of stock after expiration of the time allowed by statute for the exercise of that right. In effect, plaintiff sought a rescission. Stock was tendered and payment of the value was demanded.

The defendant was the corporation involved in the merger. In case of a recovery its treasury would have been depleted to the extent of the sum allowed for damages. This court held that strict compliance with the statute was necessary in order to maintain such a proceeding. It was also held that the doctrine of laches applied because the plaintiff, Stanford University, had actual notice that the plan was unfair. It neglected to take proper steps after receiving knowledge sufficient to put it on inquiry.

In the case at bar, we have an entirely different kind of a proceeding. The Anglo bank is not joined. No judgment recovered will be payable out of the treasury of that corporation. The defendants are directors who have been guilty of a breach of trust. The action is personal. The corporation is not involved—under our theory of liability it will not be involved.

Our suit assumes that the consolidation is valid so far as the constituent banks and the present bank are con-

cerned. Mr. Denicke and Mrs. Doble each admit that they became stockholders in the Anglo California National Bank of San Francisco as a result of the merger. They do not seek to rescind the transaction. They have retained the stock issued to them under the exchange. Suit is brought to recover the difference in value between the original holdings of these parties and the depreciated stock issued after consolidation. Appellants charge that they were subjected to a default on June 30, 1932. They admit that it is impossible to give a valid demand at this time for the exercise of the minority rights granted by 12 USCA 34a. They acknowledge this fact and sue for the amount of damage which was sustained because of the default. The damages are for a loss of legal rights.

It is apparent that the theory which this court adopted in the National Supply Company matter does not apply.

We are interested in the record in that case for another reason. There are striking differences between the consolidation agreements and literature sent to stockholders in these two cases. We believe it may assist the court if we make a comparison.

Reference to rights of minority stockholders in consolidation agreement. The contract of National Supply Company contains proper reference to the rights of shareholders who give notice of dissent. We quote from the record therein:

> "Article IV. The mode of carrying into effect the consolidation provided in this Agreement and the manner of converting the shares of each of the constituent corporations into shares of the corporation resulting from the consolidation are as follows: * * *

> "As soon as practicable after the effective date of the consolidation, the New Corporation will deliver to holders of certificates * * * of the constituent corporations (in full satisfaction of all rights * * *), *except to those who shall have dissented and demanded the value of their shares* * * * certificates representing * * * (new stock as described)." (10270 R. 106.)

There is a further reference to minority rights in a subsequent part of the same article.

> "* * * provided, however, that upon the effective date of the consolidation the shares of each of the constituent corporations shall automatically be changed and converted into shares of the New Corporation on the basis hereinabove set forth and the holders of shares of each of the constituent corporations shall cease to be holders thereof and shall cease to have any rights thereunder (*except such of them as shall have dissented and demanded the value of their shares as provided by law*) * * *" (10270 R. 109.)

The contract of National Supply Company also includes a provision appointing a process agent to act in proceedings brought for redemption of shares held by minority stockholders.

> "Article VII. The new corporation may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of (National Supply Co.), *including any amount fixed by appraisers as owing to dissenting stockholders* pursuant to the provisions of the applicable laws of the State of Delaware, and shall irrevocably appoint the Secretary of State of the State of Delaware as its agent to accept service of process * * * (in any such proceeding)." (10270 R. 115.)

National Supply Company expressly reserved the right to reject the plan in case of dissent given by more than five per cent of the capital stock outstanding.

> "Article VIII. The Board of Directors of each of the constituent corporations reserves the right, in its uncontrolled discretion, in the event that stockholders holding more than 5% of any class of shares of either of the constituent corporations duly object to this Agreement * * * to abandon and to refrain from making effective the consolidation provided for * * *" (10270 R. 115-116.)

The contract also contained express terms regarding payment of expense incurred in complying with demands for redemption.

> "Article IX. The New Corporation shall pay all expenses of carrying this Agreement * * * into effect and of accomplishing the consolidation, and shall fulfill its liability and *duty to make payment to dissenting stockholders, if any* * * *" (10270 R. 116.)

The contract used by National Supply Company is a model compared to the document which the directors prepared and adopted secretly in accomplishing a consolidation at the Anglo. *The shareholders of National Supply Company each received a copy of the contract.* It was impossible for them to read it without obtaining some knowledge as to their rights. *The Anglo saw fit to hide its contract in the files of the bank.* It was impossible for a stockholder to get any information from this agreement even if he succeeded in locating it.

The Anglo contract affirmatively denies redemption rights, it makes a binding allocation of shares, it contains no clauses for the performance of any duty enjoined by

law in respect to the rights of the minority. *It was a contract which it was necessary for a stockholder to break in order to obtain relief.* There are other important respects in which the record in the National Supply matter differs from the case at bar.

Letter of transmittal calling attention to terms of consolidation agreement. The letter sent to stockholders of National Supply Company included the following provisions sufficient to put all parties on notice.

> "To the stockholders of the National Supply Company of Delaware:
>
> "Enclosed herewith is a notice of a special meeting of the stockholders of your Company, at which a proposal will be presented to consolidate * * * in accordance with the terms of an *Agreement and Joint Plan of Consolidation* dated August 10, 1937, *a copy of which is also enclosed herewith. You are referred to that document* for the full provisions of that agreement, and all references in this letter with respect to those provisions are subject to the detailed statement thereof contained in the agreement itself." (10270 R. 122.)
>
> "You will find attached hereto an *audited balance sheet* * * * together with a pro forma balance sheet showing the financial position of the New Company as of that date *on the basis of the Agreement* and Joint Plan of Consolidation *being approved without dissent.*" (10270 R. 131.)
>
> "* * * the Agreement and Joint Plan of Consolidation reserves the right to the Board to abandon it because of dissent * * *
>
> By order of the Board of Directors,
> John M. Wilson,
> President."
>
> (10270 R. 132.)

The stockholders of Anglo California Trust Company and the Anglo & London Paris National Bank received fraudulent letters signed by Mortimer and Herbert Fleishhacker. *These letters were a substitute for the contract. They were written to tell the shareholders what the consolidation provided for.* There was no reference to a dissent or to any right of dissent. It was impossible for a layman or a lawyer to read the literature and discover anything from it. This was intentional. It was an essential part of the conspiracy.

This court denied relief to Stanford University as against National Supply Company because the University representatives were grossly negligent in failing to read the documents placed in their hands well in advance of the meeting. *In the case at bar, appellants received nothing of value. They were not intended to have anything that would give real information.* Damages are claimed because the duty to furnish such information was not performed, and because the documents that were prepared *affirmatively violated the statute.*

No. 10,347

In the
United States Circuit Court of Appeals
for the Ninth Circuit

Ernest H. Denicke,
Appellant,

vs.

R. D. Brigham, et al.,
Appellees.

STIPULATION

It is hereby stipulated by and between Ernest H. Denicke, the appellant, and R. D. Brigham, Walter E. Buck, R. Stanley Dollar, Herbert Fleishhacker, Mortimer Fleishhacker, Mortimer Fleishhacker, Jr., Walter A. Haas, William F. Humphrey, Samuel Kahn, Joseph Haber, Jr., William B. Reis, Leon Sloss, Jr., Alfred B. Swinerton, and Joseph O. Tobin, appellees, as follows:

That, whereas, this stipulation has been entered into by counsel with reference to the following set of facts:

(1) J. C. McKinstry, who was joined as a party defendant in this action in the District Court, died on February 7, 1942.

(2) Prior to his death, said decedent filed in the District Court a motion to dismiss the above entitled action on the ground of want of federal jurisdiction. Said motion appears at page 67 of the transcript on this appeal.

(3) Said motion, together with similar motions made by the other defendants in said action appearing in this court as appellees, were argued in the District Court on January 12, 1942, and were thereafter submitted for decision.

(4) J. C. McKinstry died while said motions were under submission. The order of the District Court granting defendants' motions to dismiss was made and entered on May 15, 1942. The minute order made and entered that date purports to grant the motion of the said J. C. McKinstry along with similar motions presented by the other appellees.

(5) Notice of appeal was filed on August 12, 1942. J. C. McKinstry has been named as one of the appellees, notwithstanding the fact of his death. No proceedings for administration of the estate of J. C. McKinstry have been initiated, and the parties understand that there may be no probate instituted with respect to said estate. In the absence of a stipulation, it may be necessary or proper for appellant to take certain action in this court suggesting the death of J. C. McKinstry and requesting that this court examine the record and make such ruling with respect to the motion of said McKinstry as may appear proper. Such action may include proceedings calling for the appointment of an executor or administrator of the estate.

(6) The parties desire to avoid the necessity of imposing upon the estate of J. C. McKinstry the burden of any unnecessary expense which might be occasioned in connection with an application for appointment of an executor or administrator. They also desire to define

their legal status with appellant to the extent that this may be affected by the failure to take action for a substitution of representatives in this proceeding to act on behalf of the estate of J. C. McKinstry, deceased.

Now, therefore, it is stipulated as follows:

(1) That appellant shall not be required to institute any proceedings in this court for the purpose of effecting a substitution of record and/or the joinder of any executor or administrator of the estate of J. C. McKinstry, deceased, in connection with this appeal; and that the failure of appellant to take action of that kind will not be relied upon by appellees in connection with any further proceedings in this case.

(2) That the failure of appellant to apply in this court for a reversal of the judgment entered in the District Court on the motion to dismiss filed by J. C. McKinstry shall not be deemed to establish any defense by way of res adjudicata available to any other party joined herein. Appellees, and each of them, expressly covenant and agree that they will not rely upon any act or proceeding of record in this court and/or in the District Court which may concern proceedings taken in this action affecting J. C. McKinstry; and that such defense, if any as appellees might have arising out of such proceedings has been and is hereby expressly waived.

(3) That this stipulation is without prejudice to the rights of all of the parties in all other respects, and that further proceedings in this action are to be adjudicated in the same manner and with the same effect as though J. C. McKinstry had not been joined as a party in the District Court or named as an appellee herein.

(4) This stipulation shall be filed as a part of the proceedings in this appeal.

Dated, May 27, 1943.

Aaron M. Sargent,
Attorney for Appellant.

Thatcher, Jones & Casey,
Attorneys for Appellee,
R. D. Brigham.

Norman A. Eisner,
Attorney for Appellee,
Walter E. Buck.

Brobeck, Phleger & Harrison,
Attorneys for Appellee,
R. Stanley Dollar.

Young, Hudson & Rabinowitz,
Attorneys for Appellee,
Herbert Fleishhacker.

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Lloyd S. Ackerman,
Attorney for Appellee,
Leon Sloss, Jr.

Hartley F. Peart,
Attorney for Appellee,
Alfred B. Swinerton.

Tobin & Tobin,
Attorneys for Appellee,
Joseph O. Tobin.

The foregoing stipulation is hereby approved and made a part of the record of proceedings in the above entitled action.

Dated, May 27, 1943.

Curtis D. Wilbur,
Circuit Judge.

(Endorsed): Filed May 27, 1943. Paul P. O'Brien, Clerk.

No. 10,348

In the
United States Circuit Court of Appeals
for the Ninth Circuit.

Mary E. Doble,
Appellant,
vs.
Walter E. Buck, et al.,
Appellees.

STIPULATION

It is hereby stipulated by and between Mary E. Doble, the appellant, and Walter E. Buck, R. Stanley Dollar, Herbert Fleishhacker, Mortimer Fleishhacker, Walter A. Haas, William F. Humphrey, Alfred B. Swinerton, and Joseph O. Tobin, appellees, as follows:

That, whereas, this stipulation has been entered into by counsel with reference to the following set of facts:

(1) J. C. McKinstry, who was joined as a party defendant in this action in the District Court, died on February 7, 1942.

(2) Prior to his death, said decedent filed in the District Court a motion to dismiss the above entitled action on the ground of want of federal jurisdiction. Said motion appears at page 31 of the transcript on this appeal.

(3) Said motion, together with similar motions made by the other defendants in said action appearing in this court as appellees, were argued in the District Court on

January 12, 1942, and were thereafter submitted for decision.

(4) J. C. McKinstry died while said motions were under submission. The order of the District Court granting defendants' motions to dismiss was made and entered on May 15, 1942. The minute order made and entered that date purports to grant the motion of the said J. C. McKinstry along with similar motions presented by the other appellees.

(5) Notice of appeal was filed on August 12, 1942. J. C. McKinstry has been named as one of the appellees, notwithstanding the fact of his death. No proceedings for administration of the estate of J. C. McKinstry have been initiated, and the parties understand that there may be no probate instituted with respect to said estate. In the absence of a stipulation, it may be necessary or proper for appellant to take certain action in this court suggesting the death of J. C. McKinstry and requesting that this court examine the record and make such ruling with respect to the motion of said McKinstry as may appear proper. Such action may include proceedings calling for the appointment of an executor or administrator of the estate.

(6) The parties desire to avoid the necessity of imposing upon the estate of J. C. McKinstry the burden of any unnecessary expense which might be occasioned in connection with an application for appointment of an executor or administrator. They also desire to define their legal status with appellant to the extent that this may be affected by the failure to take action for a substitution

of representatives in this proceeding to act on behalf of the estate of J. C. McKinstry, deceased.

Now, therefore, it is stipulated as follows:

(1) That appellant shall not be required to institute any proceedings in this court for the purpose of effecting a substitution of record and/or the joinder of any executor or administrator of the estate of J. C. McKinstry, deceased, in connection with this appeal; and that the failure of appellant to take action of that kind will not be relied upon by appellees in connection with any further proceedings in this case.

(2) That the failure of appellant to apply in this court for a reversal of the judgment entered in the District Court on the motion to dismiss filed by J. C. McKinstry shall not be deemed to establish any defense by way of res adjudicata available to any other party joined herein. Appellees, and each of them, expressly covenant and agree that they will not rely upon any act or proceeding of record in this court and/or in the District Court which may concern proceedings taken in this action affecting J. C. McKinstry; and that such defense, if any, as appellees might have arising out of such proceeding, has been and is hereby expressly waived.

(3) That this stipulation is without prejudice to the rights of all of the parties in all other respects, and that further proceedings in this action are to be adjudicated in the same manner and with the same effect as though J. C. McKinstry had not been joined as a party in the District Court or named as an appellee herein.

(4) This stipulation shall be filed as a part of the proceedings in this appeal.

Dated, May 27, 1943.

Aaron M. Sargent,
Attorney for Appellant.

Norman A. Eisner,
Attorney for Appellee,
Walter E. Buck.

Brobeck, Phleger & Harrison,
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R. Stanley Dollar.

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John Parks Davis,
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Hartley F. Peart,
Attorney for Appellee,
Alfred B. Swinerton.

Tobin & Tobin,
Attorneys for Appellee,
Joseph O. Tobin.

The foregoing stipulation is hereby approved and made a part of the record of proceedings in the above entitled action.

Dated, May 27, 1943.

Curtis D. Wilbur,
Circuit Judge.

(Endorsed): Filed May 27, 1943. Paul P. O'Brien, Clerk.